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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *2011-355*

ACCUSATION

13 **WANDRA NICOLE LOWE**
871 Walnut Avenue, Apartment P
14 Monrovia, CA 91016

15 **Registered Nurse License No. 747454**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about March 16, 2009, the Board of Registered Nursing issued Registered
24 Nurse License Number 747454 to Wandra Nicole Lowe (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on August 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), an expired license may be renewed at any time within eight years after expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued..

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the

1 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of the crime in
3 order to fix the degree of discipline or to determine if the conviction is substantially related to the
4 qualifications, functions, and duties of the licensee in question.

5 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
6 'registration.'"

7 9. Section 2761 of the Code states:

8 "The board may take disciplinary action against a certified or licensed nurse or deny an
9 application for a certificate or license for any of the following:

10 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

11 "...

12 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
13 functions, and duties of a registered nurse, in which event the record of the conviction shall be
14 conclusive evidence thereof.

15 "..."

16 10. Section 2762 of the Code states:

17 "In addition to other acts constituting unprofessional conduct within the meaning of this
18 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
19 following:

20 "...

21 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
22 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
23 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
24 himself or herself, any other person, or the public or to the extent that such use impairs his or her
25 ability to conduct with safety to the public the practice authorized by his or her license.

26 "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-
27 administration of any of the substances described in subdivisions (a) and (b) of this section, or the
28

1 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
2 of this section, in which event the record of the conviction is conclusive evidence thereof.”

3 11. Section 2765 of the Code states:

4 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
5 charge substantially related to the qualifications, functions and duties of a registered nurse is
6 deemed to be a conviction within the meaning of this article. The board may order the license or
7 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
8 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
9 order granting probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person
11 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
12 of guilty, or dismissing the accusation, information or indictment.”

13 REGULATIONS

14 12. California Code of Regulations, title 16, section 1444, states:

15 “A conviction or act shall be considered to be substantially related to the qualifications,
16 functions or duties of a registered nurse if to a substantial degree it evidences the present or
17 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
18 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

19 “(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
20 subdivision (d) of Penal Code Section 11160.

21 “(b) Failure to comply with any mandatory reporting requirements.

22 “(c) Theft, dishonesty, fraud, or deceit.

23 “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
24 Penal Code.”

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1 13. California Code of Regulations, title 16, section 1445 states:

2 “....

3 “(b) When considering the suspension or revocation of a license on the grounds that a
4 registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such
5 person and his/her eligibility for a license will consider the following criteria:

6 “(1) Nature and severity of the act(s) or offense(s).

7 “(2) Total criminal record.

8 “(3) The time that has elapsed since commission of the act(s) or offense(s).

9 “(4) Whether the licensee has complied with any terms of parole, probation, restitution or
10 any other sanctions lawfully imposed against the licensee.

11 “(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
12 Penal Code.

13 “(6) Evidence, if any, of rehabilitation submitted by the licensee.”

14 **COST RECOVERY**

15 14. Section 125.3 of the Code provides that the Board may request the administrative law
16 judge to direct a licensee found to have committed a violation or violations of the licensing act to
17 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(January 12, 2010, Conviction for DUI on October 24, 2009)**

20 15. Respondent is subject to disciplinary action under Code sections 490 and 2761,
21 subdivision (f), on the grounds that she was convicted of a crime that is substantially related to
22 the qualifications, functions and duties as a registered nurse. The circumstances are as follows:

23 a. On January 12, 2010, in a criminal case entitled *The People of the State of California*
24 *v. Wandra Nicole Lowe*, Kern County Superior Court case number BM760764A, Respondent was
25 convicted on her plea of nolo contendere of violating Vehicle Code section 23152, subdivision
26 (a), driving while under the influence of alcohol.

27 b. The facts that led to the conviction are that on October 24, 2009, a California
28 Highway Patrol (CHP) officer responded to a call from CHP dispatch of a two-vehicle traffic

1 collision at Calloway Drive, south of Rosedale Highway in Bakersfield in Kern County. When
2 the CHP officer contacted Respondent, he noticed a strong odor of alcohol, that Respondent's
3 speech was thick and slurred, her body language and movement were delayed and lethargic, and
4 her eyes were extremely watery and glassy in appearance. Respondent had rear-ended a car
5 stopped at a red light while driving at an unsafe speed of about 50 miles per hour. Respondent
6 and the two victims in the rear-ended car sustained injuries but sought to seek their own medical
7 attention. Respondent told the officer she was driving from a friend's house to Denny's and
8 admitted that she drank two rum & cranberry drinks. Respondent was unlicensed to drive in the
9 State of California and had no proof of vehicle insurance. After field sobriety tests were
10 performed, which Respondent failed, and preliminary alcohol screen (PAS) tests yielded results
11 of .15 percent blood alcohol content (BAC), Respondent was arrested. Respondent consented to a
12 breath test at the Kern County Jail and the test yielded results of .14 percent BAC.

13 c. As a result of the conviction, Respondent was sentenced to probation for 3 years;
14 ordered to serve 2 days in jail with credit for 2 days; complete a licensed alcohol education
15 program for 3 months or longer; to pay various fines and fees; and pay restitution.

16 SECOND CAUSE FOR DISCIPLINE

17 (Using Alcohol to a Dangerous Extent to Herself and Others)

18 16. Respondent's license is subject to discipline under Code section 2762,
19 subdivision (b), in that Respondent used alcohol to an extent dangerous to herself and others as is
20 set forth in paragraph 15, above, which is incorporated by this reference.

21 THIRD CAUSE FOR DISCIPLINE

22 (Criminal Conviction Involving the Consumption of Alcohol)

23 17. Respondent's license is subject to discipline under Code section 2762,
24 subdivision (c), in that Respondent was convicted of a criminal offense involving the
25 consumption of alcohol as is set forth in paragraph 15, above, which is incorporated by this
26 reference.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 747454, issued to Wandra Nicole Lowe;
2. Ordering Wandra Nicole Lowe to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/20/10

for 
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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